

Opinion of the Court.

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such nuisance either by fine or imprisonment, or by action in the district court of the county in which such city is located, or by both; such action to be prosecuted in the name of the city. They may also by ordinance provide all necessary rules and regulations for smoke inspection, and the abatement and prevention of the smoke nuisance.

"Section 3. Repeal. That chapter thirty-seven (37) of the laws of the thirty-fourth general assembly be and the same is hereby repealed." Laws of Iowa, V. 35, p. 43.

This statute likewise includes the City of Des Moines.

The former statute was repealed by the new one. The effect of this repeal upon the validity of the ordinance is a state question, and as we understand the Iowa decisions, the authority of the ordinance here in question remained unimpaired. The statutory change did not have the effect to annul the ordinance passed under the former identical grant of authority. *Allen v. Davenport*, 107 Iowa, 90; *State v. Prouty*, 115 Iowa, 657.

It is further contended that conceding the statutory authority the ordinance is in excess of the legislative grant. This question does not seem to have been passed upon specifically in any Iowa case called to our attention. The statute, after declaring the emission of dense smoke within the corporate limits of such cities as Des Moines, to be a nuisance, authorizes the city to provide by ordinance for the abatement of such nuisance by fine or imprisonment or by action in the District Court of the county, or both, such action to be prosecuted in the name of the city; and, furthermore, municipalities are authorized to provide by ordinance all necessary rules and regulations for smoke inspection and the abatement or prevention of the smoke nuisance. The Smoke Inspector must be qualified by training and experience to understand the theory and practice of smoke inspection. He has the benefit of counsel of the Smoke Abatement Commis-

sion, consisting of five members to be appointed by the City Council, at least one of whom must have had experience in the installation and conduct of power and heating plants. From the Smoke Inspector there is an appeal to the Smoke Abatement Commission in case of disagreement over plans for newly constructed plants or reconstruction of old ones. This grant of authority would seem to be sufficient to authorize the passage of an ordinance of a reasonable nature, such as we believe the one now under consideration to be. It delegates authority to carry out details to boards of local commissioners. That such rules and regulations are valid, subject as they are to final consideration in the courts, to determine whether they are reasonably adapted to accomplish the purpose of a statute, has been frequently held. 2 Dillon Munic. Corps. 5th Ed. § 574. We find nothing in the Iowa cases to indicate that the Supreme Court of that State has laid down any different rule upon this question. That the courts of Iowa may be resorted to in case of an abuse of the powers vested in the Inspector and Commission seems to follow from the decision of the Supreme Court of the State in *Hubbell v. Higgins*, 138 Iowa, 136.

As to the attack upon the ordinance because of arbitrary classification, this question has been so often discussed that nothing further need be said. The ordinance applies equally to all coming within its terms, and the fact that other businesses might have been included, does not make such arbitrary classification as annuls the legislation. Nor does it make classification illegal because certain cities are included and others omitted in the statute. *Eckerson v. Des Moines*, 137 Iowa, 452.

We think the District Court was right in dismissing the bill upon its merits.

*Affirmed.*